

SENATE, No. 2221

[Senate, November 23, 2009 - New Draft of Senate, No. 2149 reported from the committee on State Administration and Regulatory Oversight.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT RELEASING CERTAIN LAND IN BRIMFIELD FROM THE OPERATION OF AN AGRICULTURAL PRESERVATION RESTRICTION.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to release certain land from the operation of an agricultural preservation restriction, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

- 1 **SECTION 1.** The department of agricultural resources (hereafter the “department”) holds an
- 2 agricultural preservation restriction (“APR”) recorded with the Hampden Registry of Deeds at Book
- 3 11476, Page 498 and Book 11544, Page 398 on land owned by Ronald Weston and Linda Weston
- 4 (hereafter “Weston”; which term shall include successors in title, heirs, and assigns, as the context shall

5 require). Under section 40E of chapter 7 and section 32 of chapter 184 of the General Laws, and
6 notwithstanding any other general or special law to the contrary, the Secretary of Energy and
7 Environmental Affairs shall execute a certificate of release of a portion of the land subject to the APR
8 covering approximately 7.7 acres in total and shown on a plan dated November 10, 2008, recorded with
9 the Hampden County registry of Deeds at Plan Book 354, Plan 93, said portion being more particularly
10 described as follows:

11 Land on the easterly side of Hollow Road in Brimfield, Hampden County, Massachusetts, as
12 shown on a plan of land entitled "Plan of land in Brimfield, MA prepared for Ronald N. & Linda M.
13 Weston (owners)" by Roger Woods & Co., said plan being recorded with the Hampden Registry of
14 Deeds at Plan Book 354, Plan 93, and being more particularly bounded and described as follows:

15 Beginning at a point on the easterly side of Hollow Road as shown on said plan;

16 Thence Southeasterly on two courses three hundred fifty-eight (358) feet, more or less; Thence
17 Northeasterly ninety (90) feet; Thence Southeasterly seventy (70) feet; Thence Southwesterly ninety (90)
18 feet; Thence Southeasterly three hundred sixty-four (364) feet more or less; Thence Northeasterly two
19 hundred ninety-eight (298) feet, more or less;

20 Thence Southeasterly four hundred seven (407) feet, more or less; Thence Northeasterly three
21 hundred eleven (311) feet, more or less; Thence Northwesterly three hundred seven (307) feet, more or
22 less; Thence Northeasterly two hundred eighty one feet (281) feet, more or less; Thence southeasterly
23 three hundred five (305) feet, more or less; Thence in three (3) courses one thousand sixty-two (1,062)
24 feet, more or less; Thence Northwesterly one hundred forty (146) feet more or less; Thence
25 Northeasterly one hundred eighty four (184) feet, more or less; Thence Northwesterly on two (2)
26 courses three hundred forty-two (342) feet, more or less; Thence Southwesterly two hundred (200) feet;
27 Thence Northwesterly ninety (90) feet; Thence Northeasterly two hundred (200) feet;

28 Thence Northwesterly on two (2) courses one hundred eighty-nine (189) feet, more or less;
29 Thence Southwesterly one hundred forty (140) feet; Thence Northwesterly one hundred forty (140) feet;
30 Thence Northeasterly one hundred forty (140) feet; Thence Northwesterly on two (2) courses three
31 hundred twelve (312) feet to a point on the easterly side of Hollow Road; Thence N. 31 00'50" E. along
32 said road a distance of twenty-five (25) feet, more or less to the point of beginning (referred to hereafter
33 as "the 7.7 acre parcel"). The Commonwealth, however, and its agents and assigns, shall retain, as
34 ancillary to and for the benefit of the land remaining under restriction, an easement and right of way to
35 pass and re-pass in perpetuity on foot and by vehicle on all roadways, farm roads, and bridges now
36 existing or hereafter constructed on the land herein proposed to be released, for any and all purposes set
37 forth in the original APR as hereby amended. Notwithstanding the restricted status of land shown on the
38 aforesaid plan as "proposed function hall access corridor," Weston shall have the non-exclusive right to
39 pass and re-pass on foot and by vehicle over said corridor, as ancillary to and for the benefit of the land
40 herein released.

41 **SECTION 2.** As a condition precedent to the release of the 7.7 acre parcel from the APR,
42 Weston and the department shall execute and cause to be recorded an amendment of the existing
43 restriction, said amendment placing a currently unrestricted parcel of 8.0 acres, owned by Weston, under
44 restriction in accordance with the terms and provisions of the original APR as amended, the 8.0 acres
45 thereupon and thereafter to be subject thereto. The 8.0 acre parcel lies easterly of Hollow Road in
46 Brimfield Hampden County, Massachusetts, and is as shown on a plan of land entitled "Plan of land in
47 Brimfield, MA prepared for Ronald N. & Linda M. Weston (owners)" by Roger Woods & Co., said plan
48 being recorded with the Hampden Registry of Deeds at Plan Book 354, Plan 93 and labeled as
49 "PARCEL TO BE ADDED TO AGRICULTURAL PRESERVATION RESTRICTION AREA 8.0
50 acres."

51 **SECTION 3.** As a condition subsequent to the release of the 7.7 acre parcel from the APR,
52 Weston, and their heirs, successors, and assigns, shall cause a certain percentage as specified below of

the annual total gross revenues from any commercial or other business operations on the 7.7 acre parcel, including but not limited to a wedding and banquet operation, to be annually devoted to enhancing the agricultural productivity of the remaining APR land, for so long as the 7.7 acre parcel is used for a commercial or other business purpose. For purposes of this Section, enhancements to the agricultural productivity of the remaining APR land shall be those proposed by Weston and approved by the Department, and shall fall within one or more of the following six categories:

(1) implementation of a Best Management Plan and Nutrient Management Plan for Christmas Tree production developed in accordance with industry standards, said plan and the implementation thereof to be reviewed and reported to the department by an independent third party mutually satisfactory to Weston and the department on a two year basis; (2) implementation of a Resource Management Plan developed for all of the APR restricted land, said plan and the implementation thereof to be reviewed and reported to the department by an independent third party mutually satisfactory to Weston and the department on a five year basis; (3) implementation of a Nutrient Management Plan developed for all of the APR restricted land, such plan and the implementation thereof to be reviewed and reported to the department by an independent third party mutually satisfactory to Weston and the department on a five year basis; (4) implementation of a Manure Management Plan developed for Weston's equine facility approved by the department, said plan and the implementation thereof to be reviewed and reported to the department by an independent third party mutually satisfactory to Weston and the department; (5) development and implementation of a plan establishing Christmas tree production on the 8 acre parcel being added to the Agricultural Preservation Restriction, integrated within the Best Management Plan and Nutrient Management Plan for Christmas tree production set forth in Section 3(1) above; or 6) implementation of an approved NRCS farm plan. If Weston fails or neglects to make a proposal, the department shall select an enhancement to productivity as the department's choice and so notify Weston.

77 On an annual basis commencing no later than one year after the effective date of this act, Weston
78 shall cause a certified public accountant or professional with equivalent credential, reasonably
79 satisfactory to the department, to provide to the department a written certification of compliance by
80 Weston with the expenditure requirement set forth in this section. The certified public accountant or
81 professional with equivalent credential shall have access to the original financial books and records of
82 Weston, their successors, lessees, and assigns, and the original books and records of any other party
83 conducting business operations on the land released under lease or other arrangement. The department
84 shall have the authority to bring a civil action to enforce the provisions of this paragraph.

85 The percentages to be devoted to agriculture shall be as follows: 2% of gross revenues for the
86 first two years of operation of the business on the 7.7 acre parcel following the effective date of this act;
87 4% of gross revenues for the next two years of operation following the effective date of this act; and 5%
88 of gross revenues thereafter, provided that Weston shall not be required to expend in any single year or
89 in the aggregate more than the annual cost of implementing a plan approved under this section.

90 **SECTION 4.** As a condition precedent to the release of the 7.7 acre parcel from the APR,
91 Weston and the department shall execute and cause to be recorded an amendment to the existing
92 restriction, said amendment placing under restriction that portion of the currently unrestricted 30,000
93 square feet of land owned by Weston that lies outside the boundaries of the land proposed to be released
94 under Section 1. Upon the recording thereof, this portion shall be governed by the terms and provisions
95 of the existing APR as amended, thereupon and thereafter to be subject thereto. The 30,000 square foot
96 parcel is bounded and described as follows:

97 Beginning at a point on the easterly street line of Hollow Road which point is Fifty and 23/100
98 (50.23) feet northerly of the northwesterly corner of land now or formerly of Charles H. & Linda D.
99 Thompson; thence running S 64° 28' 00" E One hundred eighty three and 99/100 (183.99) feet to a
100 point; thence turning and running S 55° 21' 05" E Two hundred twenty four and 58/1 00 (224.58) feet to

101 a point; thence turning and running S 60° 50' 25" E a distance of Eight hundred seventeen and 151100
102 (817.15) feet to a point located in the westerly boundary line of land now or formerly of Cook, said last
103 three courses being along land of Ronald N. and Linda M. Weston; thence turning and running N 32° 06'
104 55" E Twenty five and 00/100 (25.00) feet to a point, thence turning and a running N 57° 53' 05" W One
105 hundred forty and 00/100 (140.00) feet to a point marking the beginning of the so called "Envelope",
106 thence turning and running N 32° 06' 55" E Two hundred and 00/100 (200.00) feet, thence turning and
107 running N 57° 53' 05" W One hundred fifty and 00/100 (150.00) feet, thence turning and running S 32°
108 06' 55" W Two hundred and 00/100 (200.00) feet, thence turning and running S 57° 53' 05" E One
109 hundred fifty and 00/100 (150.00) feet to said point of beginning of said "Envelope".

110 **SECTION 5.** Except as amended by this act, the APR shall remain in full force and effect.